

Michael P. Lehmann (77152)  
**COHEN, MILSTEIN, HAUSFELD & TOLL, P.L.L.C.**  
 mlehmann@CMHT.com  
 One Embarcadero Center  
 Suites 526 A & B  
 San Francisco, CA 94111  
 Telephone: (415) 623-2047  
 Facsimile: (415) 433-5994  
 [Additional counsel listed on signature page]

FILED  
 OCT 23 PM 3:06  
 CLERK, U.S. DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

*Handwritten signature/initials*

*1 gsa*

**Counsel for Plaintiffs and the Proposed Class**

**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA**

CHRISTOPHER JAMES LEE and  
 YANG HEE LEE, individually  
 and on behalf of others similarly situated

Plaintiffs,

v.

KOREAN AIR LINES CO., LTD., and  
 ASIANA AIRLINES, INC.,

Defendants.

**VRW**

No.

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

Plaintiffs Christopher James Lee and Yang Hee Lee ("Plaintiffs"), by and through their undersigned attorneys, complain and allege as follows:

**NATURE OF THE ACTION**

1. This action arises out of a long-running, international conspiracy, beginning no later than January 1, 2000, and continuing until at least July 16, 2006 (the "Class Period"), among defendants Korean Air Lines Co., Ltd., and Asiana Airlines, Inc. (collectively, "Defendants") to fix, raise, maintain, and/or stabilize passenger fares and wholesale fares charged for passenger air transportation between the United States and the Republic of Korea ("Korea"), in violation of Section 1 of the Sherman Antitrust, 15 U.S.C. § 1.

1           2.       Plaintiffs bring this civil action on behalf of themselves and all others similarly  
2 situated, pursuant to Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15, 26, seeking treble  
3 damages and injunctive relief against Defendants.

#### 4                               **JURISDICTION AND VENUE**

5           3.       This complaint is filed under Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§  
6 15 and 26, to obtain injunctive relief for violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

7           4.       The Court has original federal question jurisdiction over the Sherman Act claim  
8 asserted in this complaint pursuant to 28 U.S.C. §§1331 and 1337 and Sections 4 and 16 of the  
9 Clayton Act, 15 U.S.C. §§ 15 and 26.

10          5.       Venue is proper in this District pursuant to Sections 4(a) and 12 of the Clayton  
11 Act, 15 U.S.C. §§ 15 and 22, and 28 U.S.C. § 1391(b), (c), and (d) because Defendants reside,  
12 transact business, are found within, and/or have agents within this District and a substantial part  
13 of the events giving rise to Plaintiffs' claims occurred and a substantial portion of the affected  
14 interstate trade and commerce described below has been carried out in this District.

15          6.       This Court has personal jurisdiction over Defendants because, *inter alia*, each: (a)  
16 transacted business in this District; (b) directly or indirectly sold and delivered passenger air  
17 transportation in this District; (c) has substantial aggregate contacts with this District; and (d)  
18 engaged in an illegal price-fixing conspiracy that was directed at, and had the intended effect of  
19 causing injury to, persons and entities residing in, located in, or doing business in this District.

#### 20                               **DEFENDANTS**

21          7.       Defendant Korean Air Lines Co., Ltd. ("Korean Air") is a corporation organized  
22 and existing under the laws of Korea. It is headquartered at Korean Air Operations Center, 1370,  
23 Gonghang-dong, Gangseo-gu, Seoul, Korea 157-712. Korean Air conducts passenger air  
24 transportation throughout the world, including flights to and from the United States and this  
25 District.

26          8.       Defendant Asiana Airlines Inc. ("Asiana") is a corporation organized and existing  
27 under the laws of Korea. It is headquartered in Asiana Town, Kangseo, P.O. Box 98 #47, Osae-  
28

1 Dong, Jangseo-Ku, Seoul, Korea. Asiana conducts passenger air transportation throughout the  
2 world, including flights to and from the United States and this District.

3 **UNNAMED CO-CONSPIRATORS**

4 9. On information and belief, at all relevant times, other airlines, entities, and/or  
5 persons willingly conspired with Korean Air and Asiana in their unlawful restraint of trade. All  
6 averments herein against Korean Air and Asiana are also averred against these unnamed co-  
7 conspirators as though set forth at length.  
8

9 **AGENTS**

10 10. The acts alleged to have been done by Defendants were authorized, ordered, or  
11 performed by their directors, officers, managers, agents, employees, or representatives while  
12 actively engaged in the management of Defendants' affairs.

13 **PLAINTIFFS**

14 11. Plaintiff Christopher James Lee is an individual resident of the Commonwealth of  
15 Virginia, residing at 2227 Malraux Drive, Vienna, Virginia 22182. During the Class Period,  
16 Plaintiff purchased air transportation services from Korean Air and/or Asiana and has suffered  
17 pecuniary injury as a result of the antitrust violation alleged herein.

18 12. Plaintiff Yang Hee Lee is an individual resident of the Commonwealth of Virginia,  
19 residing at 2227 Malraux Drive, Vienna, Virginia 22182. During the Class Period, Plaintiff  
20 purchased air transportation services from Korean Air and/or Asiana and has suffered pecuniary  
21 injury as a result of the antitrust violation alleged herein.

22 **INTERSTATE TRADE AND COMMERCE**

23 13. Throughout the Class Period, there was a continuous and uninterrupted flow of  
24 invoices for payment, payments, and other documents essential to the provision of passenger air  
25 transportation transmitted in interstate and foreign trade and commerce between and among  
26 offices of Defendants and their customers located throughout the world, including throughout the  
27 United States.  
28

1           14. Throughout the Class Period, Defendants transported substantial numbers of  
2 passengers, in a continuous and uninterrupted flow of interstate and foreign trade and commerce,  
3 between various airports in the United States and Korea.

4           15. Throughout the Class Period, Defendants' unlawful activities, as described herein,  
5 took place within and substantially affected the flow of interstate and foreign trade and commerce  
6 and had a direct, substantial and reasonably foreseeable effect upon commerce in the United  
7 States and elsewhere.

8                                   **FACTUAL ALLEGATIONS**

9           16. Korean Air is the largest passenger carrier between the United States and Korea,  
10 averaging more than \$250 million per year on those flights. It operates passenger air  
11 transportation to 130 cities in 45 countries, including the United States. Asiana, the second  
12 largest passenger carrier between the United States and Korea, operates passenger air  
13 transportation to 73 international destinations in 17 countries worldwide, including the United  
14 States.

15           17. Defendants sold tickets to passengers directly at a published fare. The published  
16 fare included both a base fare and, at times during the Class Period, a fuel surcharge. The base  
17 fare and fuel surcharge charged to passengers by Defendants are collectively referred to herein as  
18 the "passenger fare."

19           18. Defendants also sold tickets to travel agents who resold these tickets to passengers.  
20 When Defendants sold tickets to travel agents for resale to passengers, they sold tickets at a  
21 discounted published fare, which is referred to herein as the "wholesale fare."

22           19. Beginning no later than January 1, 2000, and continuing through at least July 16,  
23 2006, Defendants and their co-conspirators entered into and engaged in a combination and  
24 conspiracy to suppress and eliminate competition by fixing the price for passenger and wholesale  
25 fares charged for flights between the United States and Korea.

26           20. As part of their conspiracy, and in furtherance thereof, Defendants and their  
27 co-conspirators did those things that they conspired to do, including the following:  
28



1 a. Participating in meetings, conversations and communications in the United  
2 States and elsewhere to discuss one or both components (the base fare and the fuel surcharge) of  
3 the passenger fares and wholesale fares to be charged for flights between the United States and  
4 Korea;

5 b. Agreeing during such meetings, conversations and communications, on one  
6 or both components of the passenger fares and wholesale fares to charge on flights between the  
7 United States and Korea; and

8 c. Levying passenger and wholesale fares on flights between the United  
9 States and Korea in accordance with the agreements reached; and

10 d. Engaging in meetings, conversations, and communications in the United  
11 States for the purpose of monitoring and enforcing adherence to the agreed-upon passenger fares  
12 and wholesale fares.

13 21. As a direct and proximate result of the Defendants' conspiracy, Plaintiffs and each  
14 member of the Class have been injured and damaged.

15 **GOVERNMENT PROCEEDINGS**

16 22. On August 1, 2007, the United States Department of Justice ("DOJ") filed a  
17 criminal information against Korean Air in the United States District Court for the District of  
18 Columbia, charging it with violating Section 1 of the Sherman Act, 15 U.S.C. § 1, for engaging in  
19 the price fixing conspiracy alleged herein, as well as a price fixing conspiracy directed at air  
20 cargo rates.

21 23. That same day, the DOJ announced that Korean Air had agreed to plead guilty and  
22 pay a \$300 million fine for its participation in the two charged conspiracies. In confirming that it  
23 had agreed to plead guilty, Korean Air attorney Ahn Yong-Seok announced that Korean Air  
24 "apologises [sic] to shareholders and customers for causing trouble." He further stated that  
25 Korean Air's compliance officer would attempt to ensure future compliance with U.S. and global  
26 fair trade rules. Subsequent news reports indicated that Asiana may also be subject to potential  
27 fines.  
28

1           24. On August 23, 2007, Korean Air entered a plea of guilty to two counts of violating  
2 Section 1 of the Sherman Act and was sentenced to a criminal fine of \$300 million. Final  
3 judgment to this effect was entered by Judge Bates in the United States District Court for the  
4 District of Columbia.

5                                   **FRAUDULENT CONCEALMENT**

6           25. Throughout the Class Period, Defendants affirmatively and fraudulently concealed  
7 their unlawful conduct against Plaintiffs and the Class.

8           26. Plaintiffs and the members of the Class did not discover, and could not discover  
9 through the exercise of reasonable diligence, that Defendants were violating the antitrust laws as  
10 alleged herein until shortly before this litigation was commenced. Nor could Plaintiffs and the  
11 members of the Class have discovered the violations earlier than that time because Defendants  
12 conducted their conspiracy in secret, concealed the nature of their unlawful conduct and acts in  
13 furtherance thereof, and fraudulently concealed their activities through various other means and  
14 methods designed to avoid detection. The conspiracy was by its nature self-concealing.

15           27. Only on or about August 1, 2007, when the DOJ announced the charges against  
16 Korean Air for fixing passenger fares and wholesale fares was the existence of the conspiracy  
17 disclosed to the public. Plaintiffs and the members of the Class could not have discovered the  
18 unlawful conduct at an earlier date through the exercise of reasonable diligence because of  
19 Defendants' active and purposeful concealment of their unlawful activities.

20           28. Defendants engaged in a successful, illegal price-fixing conspiracy with respect to  
21 passenger air transportation passenger fares and wholesale fares, which they affirmatively  
22 concealed in at least the following respects:

23                   a. By agreeing among themselves not to discuss publicly, or otherwise reveal,  
24 the nature and substance of the acts and communications in furtherance of the illegal scheme;

25                   b. By engaging in secret meetings, telephone calls, and other communications  
26 in order to further their illicit cartel; and/or

27                   c. By giving false and pretextual reasons for their pricing of passenger fares  
28

1 and wholesale fares, and for the increases in those prices during the relevant period, and by  
2 describing such pricing and increases falsely as being a result of external costs rather than  
3 collusion.

4 29. As a result of Defendants' fraudulent concealment of its conspiracy, Plaintiffs and  
5 the members of the Class assert the tolling of any applicable statute of limitations affecting the  
6 rights of action of Plaintiffs and the members of the Class.

7 **CLASS ACTION ALLEGATIONS**

8 30. Plaintiffs bring this action on her own behalf and as a class action pursuant to Rule  
9 23(a) and (b) of the Federal Rules of Civil Procedure on behalf of the following Class:

10 All persons and entities that purchased passenger air transportation  
11 that included at least one flight segment between the United States  
12 and the Republic of Korea from Defendants or any predecessor,  
13 subsidiary or affiliate thereof, at any time between January 1, 2000  
14 and July 16, 2006. Excluded from the class are governmental  
15 entities, Defendants, any parent, subsidiary or affiliate thereof, and  
16 Defendants' officers, directors, employees and immediate families.

17 31. Plaintiffs do not know the exact number of members of the Class because such  
18 information is in the exclusive control of Defendant. Due to the nature of the trade and  
19 commerce involved, however, Plaintiffs believe that Class members number at least in the  
20 thousands and are sufficiently numerous and geographically dispersed throughout the United  
21 States and the world so that joinder of all Class members is impracticable.

22 32. There are questions of law and fact which are common to the claims of Plaintiffs  
23 and the Class, including, but not limited to:

24 a. Whether Defendants engaged in a combination or conspiracy with their  
25 co-conspirators to fix, raise, maintain, and/or stabilize the prices for passenger fares and  
26 wholesale fares charged for flights between the United States and Korea;

27 b. Whether the purpose and/or effect of the acts and omissions alleged herein  
28 was to restrain trade, or to affect, fix, control, and/or maintain the prices for passenger fares and  
29 wholesale fares charged for flights between the United States and Korea;

c. The existence and duration of the horizontal agreements alleged herein to

1 fix, raise, maintain, and/or stabilize the prices for passenger fares and wholesale fares charged for  
2 flights between the United States and Korea;

3 d. Whether Defendants violated Section 1 of the Sherman Act, 15 U.S.C. § 1;

4 e. Whether Defendants fraudulently concealed the alleged conspiracy so as to  
5 equitably toll any applicable statute of limitations;

6 f. Whether Defendants' agents, officers, employees, or representatives  
7 participated in correspondence and meetings in furtherance of the illegal conspiracy alleged  
8 herein, and, if so, whether such agents, officers, employees, or representatives were acting within  
9 the scope of their authority and in furtherance of Defendants' business interests;

10 g. Whether, and to what extent, the conduct of Defendants caused injury to  
11 Plaintiffs and members of the Class, and, if so, the appropriate measure of damages; and

12 h. Whether Plaintiffs and members of the Class are entitled to injunctive relief  
13 to prevent the continuation or furtherance of the violation of Section 1 of the Sherman Act  
14 alleged.

15 33. Plaintiffs' claims are typical of the claims of the members of the Class.

16 34. Plaintiffs will fairly and adequately assert and protect the interests of the Class.  
17 Plaintiffs' interests are coincident with, and not antagonistic to, those of the other members of the  
18 Class.

19 35. Plaintiffs are represented by counsel competent and experienced in the prosecution  
20 of antitrust and class action litigation.

21 36. The questions of law and fact common to the members of the Class predominate  
22 over any questions affecting only individual members.

23 37. A class action is superior to other available methods for the fair and efficient  
24 adjudication of this controversy because:

25 a. The prosecution of separate actions by individual members of the Class  
26 would create a risk of inconsistent or varying adjudications, establishing incompatible standards  
27 of conduct for Defendants.  
28



3	<b><u>COUNT I</u></b>
---	-----------------------

5           39.       Plaintiffs incorporate by reference the preceding paragraphs as if fully set forth  
6       herein.

41. Defendants and their co-conspirators agreed to, and did, in fact, restrain trade or commerce by fixing, raising, maintaining, and/or stabilizing at artificial and non-competitive levels, the prices of passenger fares and wholesale fares for flights between the United States and Korea.

## CLASS ACTION COMPLAINT

1 fares. These activities included the following:

2 a. Agreeing to charge prices for passenger fares and wholesale fares at certain  
3 levels and otherwise fix, raise, maintain and/or stabilize prices for passenger fares and wholesale  
4 fares; and

5 b. Charging passenger fares and wholesale fares at agreed upon levels.

6 43. The illegal combination and conspiracy alleged herein had the following effects,  
7 among others:

8 a. The prices charged by Defendants to, and paid by Plaintiffs and members  
9 of the Class for passenger and wholesale fares were fixed, raised, maintained and/or stabilized at  
10 artificially high and non-competitive levels;

11 b. Plaintiffs and members of the Class have been deprived of free and open  
12 competition in the purchase of passenger air transportation between the United States and Korea;

13 c. Plaintiffs and members of the Class have been required to pay more for  
14 passenger air transportation between the United States and Korea than they would have paid in a  
15 competitive marketplace absent Defendants' price-fixing conspiracy;

16 d. Competition in the sale of passenger air transportation between the United  
17 States and Korea has been restrained, suppressed or eliminated.

18 44. As a direct and proximate result of Defendants' conduct, Plaintiffs and members of  
19 the Class were have been injured and damaged in their business and property in an amount to be  
20 determined according to proof.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiffs pray:

23 A. That the Court determine that this action may be maintained as a class action under  
24 Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure and direct that reasonable notice of  
25 this action, as provided by Rule 23(c)(2) of the Federal Rules of Civil Procedure, be give to  
26 members of the Class;

27 B. That the Court adjudge and decree that the contract, combination and conspiracy  
28

1 alleged herein is a *per se* unreasonable restraint of trade in violation of Section 1 of the Sherman  
2 Act;

3 C. That the Court enter judgment against Defendants, jointly and severally, in favor  
4 of Plaintiffs and the Class;

5 D. That the Court award Plaintiffs and the Class treble damages;

6 E. That the Court award Plaintiffs and the Class attorneys' fees and costs as well as  
7 pre-judgment and post-judgment interest as permitted by law;

8 F. That Defendants and their co-conspirators, their respective successors, assigns,  
9 parents, subsidiaries, affiliates and transferees, and their respective officers, directors, agents and  
10 employees, and all other persons acting or claiming to act on behalf of Defendants or their co-  
11 conspirators, or in concert with them, be permanently enjoined and restrained from, in any  
12 manner, directly or indirectly, continuing, maintaining or renewing the combination, conspiracy,  
13 agreement, understanding or concert of action, or adopting any practice, plan, program or design  
14 having a similar purpose or affect in restraining competition; and

15 G. That the Court award Plaintiffs and the Class such other and further relief as may  
16 be deemed necessary and appropriate.

17  
18 Dated: October 23, 2007

Respectfully submitted,

19  
20 By: 

Michael P. Lehmann (77152)

21 **COHEN, MILSTEIN, HAUSFELD**  
22 **& TOLL P.L.L.C.**

23 One Embarcadero Center  
24 Suites 526 A & B

San Francisco, CA 94111

25 Telephone: (415) 623-2047

26 Facsimile: (415) 433-5994

27 [mlehmann@CMHT.com](mailto:mlehmann@CMHT.com)  
28

1  
2 Steven A. Kanner  
3 Douglas A. Millen  
4 Michael E. Moskovitz  
5 **FREED KANNER LONDON &**  
6 **MILLEN LLC**  
7 2201 Waukegan Road, Suite 130  
8 Bannockburn, IL 60015  
9 Telephone: (224) 632-4500  
10 Facsimile: (224) 632-4521  
11 skanner@fklmlaw.com; dmiller@fklmlaw.com;  
12 mmoskovitz@fklmlaw.com

9 Andrew B. Sacks  
10 John K. Weston  
11 **SACKS & WESTON**  
12 114 Old York Road  
13 Jenkintown, Pennsylvania 19046  
14 Telephone: (215) 925-8200  
15 Facsimile: (215) 925-0508  
16 ABS@sackslaw.com; JKW@sackslaw.com

14 Mark S. Goldman  
15 **GOLDMAN SCARLATO & KARON, P.C.**  
16 101 West Elm Street, Suite 360  
17 Conshohocken, PA 19428  
18 Telephone: (484) 342-0700  
19 Facsimile: (484) 342-0701  
20 goldman@gsk-law.com